

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

**HARRY PEPPER & ASSOCIATES, INC.**

**Employer**

**and**

**Case 12-RC-8471**

**LOCAL UNION 630 OF THE UNITED  
ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING AND  
PIPEFITTING INDUSTRY OF THE UNITED  
STATES AND CANADA, AFL-CIO**

**Petitioner**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>
3. The Petitioner is a labor organization within the meaning of the Act.

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<sup>1</sup> The briefs submitted by the parties have been carefully considered.

<sup>2</sup> The Employer, a Florida corporation, with its principal office and place of business located in Jacksonville, Florida, is engaged in the construction industry as a general construction contractor. During the past 12 months, the Employer, in the performance of its business operations described above, provided services valued in excess of \$50,000 directly to customers outside the State of Florida, and during the same period of time, purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Florida.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner amended its petition at the hearing to seek a bargaining unit consisting of pipewelders, pipefitters, plumbers and pipefitters' helpers employed by the Employer at multi-location sites in Palm Beach County, Florida, excluding office workers, engineers, millwrights, laborers, other non-piping related craft employees, and supervisors as defined by the Act.

The Employer does not dispute the composition of the unit. However, the Employer takes the position that the petitioned-for unit is inappropriate and that the petition should be dismissed because the type of work described in the petition is being performed only at a single project, consisting of two stations in Palm Beach County. The Employer claims there is no basis for a multi-site unit in Palm Beach County. The Employer further claims that the unit is disappearing because work described in the petition is expected to come to an end in the immediate future. Therefore, there is no basis for going forward with this petition. The Employer claims that there are no present plans to bid to perform the work described in the petition by the Employer in Palm Beach County.

Contrary to the Employer, the Petitioner claims that a multi-site unit in Palm Beach County is appropriate and that the Employer's current project in Palm Beach County is expected to continue beyond the next five to six months. Additionally, the Petitioner claims that the Employer has established a presence in Palm Beach County and is actively bidding for work in Palm Beach County. The Petitioner contends that employees in the petitioned-for unit have an expectation of continued employment in Palm Beach County.

At the time of the hearing, there were about 15 employees in the petitioned-for unit. There is no history of collective bargaining for employees in the petitioned-for unit.

Thomas R. Westervelt, the Employer's area manager overseeing projects in South Florida, including primarily Dade, Broward and Palm Beach Counties, testified that the Employer

is a general contractor that performs a variety of projects ranging from water and waste water treatment plants to environmental projects, pumping stations, canals, levies, and other such work. The Employer is the general contractor on the project involved herein which consists of the construction of two large pump stations in the Everglades, known as Pump Station G-310 and Pump Station G-335. The sites are about 15 miles apart but are being constructed under a single contract with the South Florida Water Management District. The work involved for each pump station is comprised of earth work, levies, a massive reinforced concrete structure, mechanical and pipe work, the installation of six very large pumps in each station, and various architectural, electric and control work. The work performed at the project by employees in the petitioned-for unit, referred to herein as pipefitting work, consists of the fabrication and assembly of various pipe systems at each pump station site. Most of the pipe work at the project is on steel pipe, either welded or threaded, with the majority being welded steel pipe. However, there is some plastic pipe work and a little bit of ductile pipe work. At this project, the Employer is performing the pipefitting work with its own employees.

Westervelt testified that the pipefitting work at this project is the only pipefitting work that the Employer is performing in Palm Beach County. As indicated above, at the time of the hearing, the Employer employed about 15 employees performing pipefitting work at this project; they were evenly split between Pump Station G-310 and Pump Station G-335.

Westervelt testified that the Employer does all of its scheduling in-house and that one of his duties is scheduling projects. Typically, the Employer's contracts with its clients have incentives for the Employer to complete work in accordance with the schedule and damages or penalties for late completion of work.<sup>3</sup> Westervelt personally made up the schedule for completion of the current West Palm Beach project using a computer program which is used by

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<sup>3</sup> Westervelt testified that the Employer has never been assessed liquidated damages by a customer.

the Employer to schedule projects. Westervelt established the work activities, work durations and the logic in the schedule and turned it over to an engineer who performed the remaining work, including entering the information into the computer and running the calculations on the computer. Thereafter, the Employer submitted the schedule to the client for this project for approval by the client. Since then, Westervelt has been monitoring compliance with the schedule as the project has progressed. In order to do so, Westervelt visits the project on a regular basis. The project start date was in late July 1998 and the entire project is scheduled for completion on October 18, 2000. Westervelt testified that the pipefitting work at Pump Station G-310 is scheduled for completion in late May or early June 2000, at the latest, and that the pipefitting work at Pump Station G-335 is scheduled for completion during June 2000, at the latest.<sup>4</sup> He testified that these are "late finish" dates and that the Employer attempts to complete the work by "early finish" dates which are earlier than the "late finish" dates. The "late finish" dates take into account weather and other unforeseeable problems. Westervelt also testified that based on the progress made during the month prior to the hearing, he did not anticipate much change in the completion dates for the pipefitting work.

Westervelt stated that upon completion of the pipefitting work, the employees performing the pipefitting work will be laid off, and that prior to the latest "late finish" date, there would be a diminishing work force. In addition, the Employer has not had any other projects during the last five years in which the Employer performed such pipefitting work in Palm Beach County.

David Pepper, the Employer's president, testified that he is responsible for bidding work. Like Westervelt, Pepper stated that other than the project involving Pump Stations G-310 and G-335, there has not been any pipefitting work performed by the Employer in Palm Beach County in the last five years. In addition, the Employer has not subcontracted out pipefitting work in

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<sup>4</sup> The Employer introduced into evidence a Schedule Update for Pump Stations G-310 and G-335, which was run on February 24, 2000, with data from January 25, 2000. The Schedule Update shows that for the G-310 Pump Station, the latest completion date is June 9, 2000. For the G-335 Pump Station, the latest completion date is June 26, 2000.

Palm Beach County in the last five years. He also stated that the Employer has not had any other pump station jobs in Palm Beach County in the last five years. Pepper further testified that the Employer has no plans to bid to perform pipefitting work in Palm Beach County. However, Pepper stated that the Employer did have plans to bid as a general contractor on another pump station similar to G-310 and G-335.<sup>5</sup> This project is a federal project with the client being the U.S. Army Corps of Engineers. Pepper testified that the project will be a Davis-Bacon Wage Act project, that the Employer intended to subcontract out any pipefitting work which may have to be performed in connection with the project, and that the Employer would not be performing any pipefitting work itself.<sup>6</sup>

The Petitioner called Jeff Heelan as a witness. Heelan testified that he was hired by the Employer in mid-December 1999, began work on the G-310 Pump Station in early January 2000 and has also worked on the G-335 Pump Station. Heelan responded to an advertisement basically stating that an established contractor in Palm Beach County for six years was in need of pipefitters and welders. Heelan stated that during his interview by the project superintendent he was told that the pump houses were "just about to get going real heavy into the pipe work, and this job was to be done by November." In addition, Heelan was told during the interview that the Employer was bidding other jobs that are "going to be the largest waste water pump house in the world, and when we get that, we can end up being here seven years." Heelan also testified that after he began working for the Employer and about two weeks before the hearing herein,

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<sup>5</sup> At the time of the hearing, the bid was due on March 7, 2000. After the close of the hearing, the Employer filed a motion to reopen the record for the purpose of introducing David Pepper's affidavit stating that on March 7, 2000, the Employer submitted a bid as a general contractor in connection with the construction of a pump station in Palm Beach County, but that the bid did not contain any plumbing, pipefitting, pipewelding or pipefitting apprentice work to be performed by the Employer's employees. The Petitioner opposed the Employer's motion to reopen the record for various reasons including the fact that the affidavit failed to contain any newly discovered evidence, that the bid was not attached to the affidavit, and that the name of the subcontractor was not disclosed. The Employer's motion to reopen is denied on the ground that receipt of the affidavit would not affect the result herein.

<sup>6</sup> Pepper testified that the Employer is in the process of completing another pump station project in Dade County in which the Employer is the general contractor and subcontracted out the pipefitting work to a pipefitting contractor. In addition, the Employer has had jobs outside of Palm Beach County which involved pipefitting work which the Employer did not subcontract out.

Westervelt told employees at a meeting about Union representation that the next job the Employer would get would be a Davis-Bacon job and the Employer would be paying prevailing wages. Heelan stated that in his opinion that "unless the pipe Gods fell out of the sky, there's no way that the pipe could be done for those pumps to fire up in June." He also stated that a representative of the pump manufacturer who was on the job directing the employees how to install the shaft on the pump offered his opinion that "there's no way ... that this pump was going to run before November."

The record as a whole establishes that the pipefitting work on the project involved herein is expected to be completed in June 2000, although the entire project will not be completed until later. The testimony of the Employer's project manager and president establishes that the Employer has a definite schedule for the completion of the pipefitting work and that the Employer has a reasonable basis for concluding that it will meet that schedule. This evidence has not been controverted. While the Petitioner presented some evidence indicating that the pipefitting work may not be completed by the scheduled completion dates, I find that the evidence as a whole is insufficient to show that the Employer's pipefitting work on the project herein will last beyond June 2000. In so finding, I note that while others may estimate that the pipefitting work will still be ongoing after June 2000, those estimates are of limited value since the Employer can substantially control the amount of time it takes to complete its work on schedule. Further, the "late finish" dates take into account weather and other unforeseeable problems and the Employer has never been assessed liquidated damages by a customer for late completion of work.

The record evidence also establishes that with the exception of the single project involved herein, the Employer has not had any projects in Palm Beach County which involved pipefitting work. While the Employer intends to bid on a similar project in Palm Beach County as a general contractor and to subcontract out the pipefitting work, there is insufficient evidence to establish that the Employer intends to perform pipefitting work in Palm Beach County in the future, using

the Employer's own employees. The record as a whole does not establish that the Employer has a continuing presence in Palm Beach County for the purpose of performing pipefitting work using its own employees, and the geographical scope of the petitioned-for unit is limited to Palm Beach County.

Therefore, in view of the foregoing and the record as a whole, I find that the pipefitting work on the G-310 and G-335 Pump Stations will be completed by June 2000, at the latest. I also find that the Employer has not performed any other pipefitting work in Palm Beach County in the past and has no intention to do so in the future, using its own employees.

Accordingly, as completion of the pipefitting work involved herein is expected in about three months at which time the petitioned-for employees will be laid off, and the Employer has not had any other pipefitting work in Palm Beach County and does not expect to have such work for its own employees in the future, the petition for a bargaining unit limited to Palm Beach County must be dismissed. See M. B. Kahn Construction Co., 210 NLRB 1050 (1974); Davey McKee Corp., 308 NLRB 839 (1992). Cf. Fish Engineering & Construction Partners, Ltd., 308 NLRB 836 (1992). To insure the employees' statutory right to an election, should the Employer not complete the pipefitting work on Pump Stations G-310 and G-335 by July 1, 2000, or should it secure a contract before July 1, 2000, to perform pipefitting work in Palm Beach County using its own employees in the classifications described in the petition, I shall reinstate the petition herein upon a proper showing by the Petitioner of these changed circumstances. Larson Plywood Company, 223 NLRB 1161 (1976).

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.<sup>7</sup>

DATED at Tampa, Florida, this 30th day of March, 2000.

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Rochelle Kentov, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Blvd., Suite 530  
Tampa, FL 33602-5824

387-8020-6000

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<sup>7</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington DC 20570-0001. This request must be received by the Board in Washington by April 13, 2000.